In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 124

LOCAL NO. 3, UNITED PACKINGHOUSE WORKERS OF AMERICA, CIO, PETITIONER

v.

WILSON & CO., INC., A CORPORATION, AND NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (P. 7–19)[1] is reported at 210 F. 2d 325. The findings of fact, conclusions of law, and order of the Board (R. 83–131) are not reported.

[1] References to the printed volume, labeled "Record," which contains the pleadings and the Board's decision and order are designated "R." References to the volume, labeled "Proceedings," which contains the opinion and various orders of the court below are designated "P."

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JURISDICTION

The decision of the court below was entered on February 16, 1954 (P. 6–19), and its decree on March 17, 1954 (P. 20). Petitioner's petition for rehearing and the Board's motion for clarification of the opinion were denied on March 9, 1954 (P. 35, 37). The petition for a writ of certiorari was filed on June 7, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1) and Section 10 (e) of the National Labor Relations Act, as amended.

STATUTE INVOLVED

The pertinent statutory provisions are reprinted in the Petition, pp. 26–28.

DISCUSSION

Following an economic strike at plants operated by Wilson & Co., hereinafter called the Company, at Cedar Rapids, Iowa, and Faribault and Albert Lea, Minnesota, the Company refused to reinstate a number of the strikers although their positions had not been filled by replacements. In the ensuing unfair labor practice proceeding the Board found that the refusal to reinstate the strikers violated Section 8 (a) (3) and (1) of the Act (R. 87, 97–129). In so finding the Board rejected, *inter alia,* the Company's contentions that the employees engaged in misconduct for

which they could properly be denied reinstatement, and that the strike was called in violation of Section 8 (d) of the Act so that the strikers forfeited their status as employees (R. 87, 97–129).

The court below set aside the Board's order, but—as the petition correctly states (pp. 5–6, 7, 17)—the basis for the court's decision is not altogether clear. The court in its opinion discusses three questions—whether the employer's good faith belief that the employees engaged in misconduct established that he was not guilty of unlawful discrimination; whether the employees in fact engaged in such misconduct as to forfeit their rights under the Act; and whether the strike was called in violation of Section 8 (d). The decision does not appear to rest exclusively on any one of these questions.

We agree with petitioner that the question of the interpretation of Section 8 (d) is one of real importance in the administration of the Act, and we would welcome authoritative resolution of that question. The Board did not itself ask for a resolution of the question in this case because it appeared doubtful that the decision of the court below necessarily rested upon an interpretation of Section 8 (d). Similarly, it is not clear that the decision of the court below as to the em-

ployer's good faith belief necessarily conflicts with the decision in *National Labor Relations Board* v. *Industrial Cotton Mills,* 208 F. 2d 87 (C. A. 4), certiorari denied, 347 U. S. 935.[2]

However, if this Court should consider that the case sufficiently presents the questions stated in the petition, the questions are of such a nature and importance as to warrant review by this Court.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.

GEORGE J. BOTT,
General Counsel,
National Labor Relations Board.

JULY 1954.

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[2] See p. 10, n. 4, of our brief in opposition to the petition filed in the *Industrial Cotton* case, No. 582, October Term 1953.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

Following the filing of the petition for a writ of certiorari herein and the memorandum of the National Labor Relations Board, the Board, on August 5, 1954, issued its Decision and Order in *Lion Oil Company*, 109 NLRB No. 106. This decision, setting forth the Board's present view of Section 8(d) (4) of the National Labor Relations Act, bears upon question No. 1 stated in the petition,

and for that reason we believe it should be brought to the Court's attention. The text of the decision is set forth in the Appendix, *infra*, pp. 5-43.

In the *Lion Oil* case the Board reexamined and modified its earlier view with respect to Section 8(d)(4) which it had set forth in *United Packinghouse Workers*, 89 NLRB 310 and followed in the instant case. In brief, the Board's earlier view was that Section 8(d)(4) prohibits a strike to secure modification or termination of a collective bargaining agreement for a period limited to 60 days after notice of the proposed modification was given, whether or not the contract had expired. The court below rejected this interpretation, concluding that Section 8(d)(4) prohibits a strike for such purpose until the expiration of 60 days after notice or the termination of the entire contract, whichever occurred later. In the *Lion Oil* case the Board concluded that the 60-day notice period is not the maximum waiting period but that the waiting period extends until the "expiration date" of the contract. Accordingly, under this view, if the notice is given more than 60 days before the expiration date, the expiration date becomes the critical date prior to which no strike is lawful. If the notice is given less than 60 days before the expiration date, then the 60-day period extending beyond the expiration date is controlling.

The Board further held, however, that the term "expiration date" is used in the statute to mean not only the terminal date of a contract, but also any earlier agreed modification date. Under this con-

struction if the contract is for a fixed term with no provision for reopening, the expiration date is the actual terminal date. If, on the other hand, the contract provides for modification upon notice at some date earlier than its termination, the "expiration date" is the earliest date on which such modification could be effective. The same rule would apply to a contract, as in the instant case, for a fixed term providing for a wage reopening during a prescribed period.

The interpretation of Section 8(d)(4) which the Board thus adopted in the *Lion Oil* case was not, of course, presented by the Board to the Court of Appeals for the Eighth Circuit. However, it may be noted, even under the *Lion Oil* construction of the Act the conclusion reached by the Board in the instant case, that the strike conformed to the requirements of Section 8(d)(4) and therefore was lawful, would be the same. The contract here, dated December 20, 1946, was to remain in effect until August 11, 1948, and from year to year thereafter. It provided for a reopening on the issue of wages "once during the period from the date hereof, to August 11, 1947, and once during the period from August 11, 1947 to August 11, 1948 by written notice * * * thirty (30) days prior to the date on which it is desired to commence negotiations." Under the *Lion Oil* decision the "expiration date" of the contract after August 11, 1947, for purposes of Section 8(d)(4), would be the earliest date on which modification could be effective, that is, thirty days after notice of reopening

was given. The Union gave such notice on December 19, 1947, and did not go on strike until March 16, 1948, or more than 60 days after the "expiration date" of the agreement. Accordingly, if either the Board's earlier or its present interpretation of Section 8(d)(4) be accepted, the decision of the Court of Appeals that the strike failed to satisfy the requirements of that section is erroneous.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

GEORGE J. BOTT,
General Counsel,
National Labor Relations Board.

SEPTEMBER 1954.

APPENDIX

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 15-CA-488

LION OIL COMPANY

and

OIL WORKERS INTERNATIONAL UNION, CIO

DECISION AND ORDER

On July 30, 1953, a majority of a Panel of the Board issued Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order in the above-entitled case, finding that the Respondent had engaged in certain unfair labor practices and ordering that it cease and desist therefrom and take certain affirmative action as set forth in the Proposed Findings, Conclusions, and Order, attached hereto. Thereafter the Respondent filed exceptions to the Proposed Findings, Conclusions, and Order, a supporting brief, and a request for oral argument. On September 24, 1953, at Washington, D. C., the Board heard oral argument in which the Respondent, the charging Union, and the General Counsel participated.

Thereafter, in the light of the exceptions, brief, and oral argument, the Board has reviewed the Proposed Findings, Conclusions, and Order and only insofar as they are consistent with this De-

cision and Order hereby adopts the Panel's Proposed Findings, Conclusions, and Order.

1. The first issue that must be decided in this case involves interpretation of the notice provisions of Section 8 (d) of the Act. The Respondent contends that the Union failed to observe the waiting requirements of that Section before striking to enforce its demands, and that by such conduct it removed the striking employees from the protection of the Act. We do not agree.

The pertinent facts are not in dispute. In 1950 the Respondent and the Union entered into a collective bargaining contract which by its terms was to remain in effect until October 23, 1951, and was to continue in force thereafter for an indefinite period, subject to cancellation on notice by either party. Specifically, the duration clause permitted 60 days' notice to amend on or after August 24, 1951, and if the parties did not agree on a new contract after that period, a further 60 days' notice to terminate the contract completely.[1]

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[1] "This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until cancelled in the manner hereinafter in this Article provided.

"This agreement may be cancelled and terminated by the Company or the Union as of a date subsequent to October 23, 1951, by compliance with the following procedure:

> "(a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt of said notice by the party to which

On August 24, 1951, the Union notified the Respondent and the Federal Mediation and Conciliation Service of its desire to amend the contract and of the existence of a labor dispute, and sent a copy of its letter to the State Labor Commissioner for the State of Arkansas. Negotiations on modification of the contract began on August 29, 1951. On February 14, 1952, the employees voted to strike and notified the Respondent. The strike, after several postponements, occurred on April 30, 1952. On June 21, 1952, the employees offered to return to work, and the Respondent refused to reinstate them. A new contract and a strike settlement were executed on August 3, 1952, and on August 4, the strikers began to return to work.

The August 24, 1951, notices of the existence of a labor dispute were adequate in content and destination to meet the formal requirements of Section 8 (d), and we so find. The issue then is whether the Union's resort to economic action was so timed with respect to the notices as to satisfy the waiting period set out in the Section. Because of the importance of this issue and because the Section since its enactment has so seldom required construction

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notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

"(b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the subsection immediately preceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective."

by the Board, we deem some general comment on its meaning advisable. The pertinent language of the Section is set out below.[2]

The fundamental purpose of the Section is to assure that, once parties have stabilized their bargaining relationship by entering into a contract,

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[2] Section 8 (d)

. . . Where there is in effect a collective bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such a termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

. . . Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of Sections 8, 9, and 10 of this Act, as amended, . . .

the stability achieved will not be placed in jeopardy by strikes or lockouts. It is for this reason that the Section provides for a waiting period before strike or lockout action by the parties. Clearly, Congress was interested in establishing an orderly procedure for contract negotiations and in preventing the industrial unrest that is the natural consequence of the failure of parties to abide by their collective bargaining agreements.[3]

With the Congressional purpose as a background, we advert to the language itself of Section 8 (d). It is to be noted that the initial phrase of the notice provisions contained in the Section, which necessarily applies to all the following sub-divisions, reads: "Where there is in effect a collective bargaining contract covering employees * * * no party * * * shall terminate or modify such contract, unless * * *" Thus, the plain wording of the Section makes the required notices mandatory at all times when collective bargaining agreements are in effect, not only when a party desires to terminate but equally when a party seeks to modify

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[3] It is evident from the legislative history of the 1947 amendments to the Act, which include Section 8 (d), that Congress was generally concerned with promoting industrial peace by having parties adhere to collective bargaining agreements. Thus, the Senate Committee on Labor and Public Welfare in its report among other things said: "Statutory recognition of the collective agreement as a valid and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties of such agreements, and will thereby promote industrial peace." S. Rep. No. 105 on S. 1126, p. 17.

a contract.[4] It is argued that the notice provisions of the Section are applicable only when a contract is about to end. It would be futile, however, in our opinion, to require a waiting period for strikes and lockouts only at a time when the parties are already on notice, by virtue of their own agreement, of the imminence of termination. That such limited view could not have been the Congressional intent is not only shown by the plain and unambiguous language set out above, but also by the fact that there is no logical distinction—in the perspective of the Congressional objective of promoting industrial peace—between one period of a contract and another. Certainly, it is as desirable to discourage interruptions to the free flow of commerce arising from labor disputes during the life of a bargaining agreement as at or near its termination.

Turning now to the situation presented by the instant case, the critical provision is 8(d) (4), which provides that the employer and union shall continue in effect the existing contract, without resorting to strike or lockout for "sixty days after such notice is given or until the expiration date, *whichever occurs later*" (emphasis supplied). It is urged that, despite the plain wording of the statute,

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[4] Senator Ball, a proponent of Section 8 (d), said: "The provision . . . provided that where a contract between a union and an employer is in existence, fulfilling the obligation on both sides to bargain collectively means giving at least 60 days' notice of the termination of the contract, *or of the desire for any change in it*, is another provision aimed primarily at protecting the public, as well as the employee, who have been the victims of 'quickie' strikes." (emphasis supplied) Cong. Rec., May 12, 1947, p. 5146.

Congress intended that 60 days constitute the maximum waiting period before strike or lockout. We are unable to agree. If that had been the intent, there would have been no point in Congress inserting in 8 (d) (4) the phrase "until the expiration date" or the additional phrase "whichever occurs later." The language of 8 (d) (4) is not ambiguous and cannot be amended or rewritten by administrative interpretation. Moreover, if resort be had to legislative history, it appears that Senator Taft, the co-author of the Act, made it clear that 8 (d) (4) requires a waiting period before strike or lockout during the life of a contract when he said: "If such notice is given, the bill provides for no waiting period except during the life of the contract itself." [5]

Our primary problem, it seems to us, therefore, is to ascertain what Congress meant by "expiration date" in this context. Once this is determined as applied to the various types of contracts in use in the labor field, our task is greatly simplified, since we then have discovered a fixed pole against which to measure the waiting period. That is to say that the application of Section 8 (d) (4) then becomes a matter of simple arithmetic. If the notice is given more than 60 days before the ex-

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[5] Cong. Rec., April 23, 1947, p. 3952. The Senate Minority Report, in objections to Section 8 (d) stated: "Since not every collective bargaining contract contains a no-strike clause, the effect of the proposal is to incorporate such provisions by legislative fiat." S. Min. Rep. No. 105, Pt. 2, on S. 1126, p. 22. It is significant that notwithstanding this contention, the section was passed by Congress in its present form.

piration date, the expiration date becomes the critical date prior to which no strike or lockout is lawful; likewise, if the notice is given less than 60 days before the expiration date, then the 60-day period extending beyond the expiration date is controlling.

If Section 8 (d) is considered both in the framework of industrial reality [6] and in the perspective of the Congressional purpose to protect the stability of collective bargaining agreements against strikes and lockouts during the life of the contract, it becomes clear that Congress used the term "expiration date" to signify the date in the course of a labor contract when the contract, by its own terms, is subject to either modification or termination, regardless of whether notice is required explicitly by the agreement. The term "expiration date" as used in Section 8(d) (4) thus has a twofold meaning; it connotes not only the terminal date of a bargaining contract, but also an agreed date in the course of its existence when the parties can effect changes in its provisions.

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[6] For example, the Board with Court approval has held that with respect to Section 8 (d) notice of intention to modify a bargaining contract in substantial respects is the equivalent of notice to terminate. *J. W. Woodruff, Sr. d/b/a Atlanta Broadcasting Company*, 90 NLRB 808, 811, enforc'd 193 F. 2d 641 (C.A. 5); *Great Bear Logging Company*, 59 NLRB 701, 703; *American Woolen Company*, 57 NLRB 647, 649; *Atlas Felt Products Company*, 68 NLRB 1, 3; *William Barnett & Son, Inc.*, 74 NLRB 81, 82, 83. *Accord: Moran Shoe Co. and United Shoe Workers, Local 200-A, 2 Amer. Labor Arbitration Awards*, 67, 880 (Sept. 25, 1947); *Anderson* v. *Tuomi, et al.*, 230 Minn. 490, 42 N. W. 2d 204.

Under this view, the expiration date of a fixed term contract with no provisions for reopening is the actual terminal date. In this connection, we do not say that Congress intended by Section 8 (d) to convert contracts for fixed terms into contracts at will, terminable on 60 days' notice. The "expiration date" of a contract containing an automatic renewal clause—*i.e.,* an agreement subject to modification or termination upon notice at fixed annual periods—is the earliest date on which modification or termination could be effective. We think the same rule applies to a contract for a fixed term providing for a wage reopening at a prescribed period. Similarly, in contracts of indefinite duration, which are rare in labor relations, the 60 day notice to modify or terminate would fix the period during which lockouts and strikes are proscribed.

Our dissenting Member, Mr. Murdock, characterizes this interpretation of the Statute as reading a no-strike clause into every contract. This characterization misapprehends the purport of our decision. Our interpretation preserves the right to strike in all circumstances where the parties have provided in their agreement for negotiating substantial changes in its provisions—if the statutory requirements of Section 8 (d) are met. Moreover, our decision has no bearing on the right to strike for reasons and purposes other than to obtain contract modification or termination. We say only that strikes to alter the provisions of a firm contract of fixed duration, and containing no provision for modification, must await the termination date.

Member Murdock's interpretation of Section 8 (d) destroys, in our opinion, the obligation of the parties to abide by the terms of a collective bargaining agreement. For he would permit strikes and lockouts to force changes in the terms of a bargaining agreement at any time during its lifetime, rather than only at such time as was contemplated by the parties when they entered into the agreement. In fine, Member Murdock's interpretation defeats the Congressional purpose of promoting stability in bargaining relationships.

Our holding, moreover, supports the prime objective of the Act as a whole, to encourage the "practices and procedures of collective bargaining". It has been stated too often to bear repetition that the ultimate achievement of collective bargaining is the contract itself. If, as we believe, Congress, in the 1947 Amendments to the Act, deemed it wise through Section 8 (d) to insist upon adherence to fixed contracts voluntarily negotiated and executed, its step only furthered the basic purpose of the Act itself. Nor, in the light of experience, is our construction inconsistent with the actualities of industrial life. Contracts for fixed periods are not made to be broken. That the intention to be bound by the established expiration date is ever present during negotiations is conclusively evidenced by the stress always placed in contract negotiations on wage reopening—or other modification—clauses. These clauses, now almost universal in bargaining contracts exceeding one year in duration, are in effect qualifying reservations of

the privilege to economic action at dates earlier than the final terminal day.[7]

On this point, we feel that we should comment on the critical significance which Member Murdock attaches to the differences between contractually provided notices to modify and notices to terminate.[8] The inconsistency between such a view and the salutary purposes of the entire Section is especially illustrated by this very case. Thus, under Member Murdock's interpretation, we take it that the Union was free to strike without giving any notice whatsoever in August, 1951, since this was presumably not "around the expiration date of the contract." This is apparently so for the reason that the contract had no fixed expiration date. However, our colleague would further hold that, having given notice to modify, the Union by its own action in seeking to comply with 8 (d) (at a time when he thinks it was not required by 8 (d) to do so) created an obligation to give a second notice and then await the final termination of the agreement before it could lawfully strike. In short, the Union, under his interpretation, could have

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[7] In discussing the union's duty to bargain as set out in Section 8 (b) (3) and 8 (d) of the 1947 Amendments, Senator Morse said: "A contract has been signed, and I take the position this afternoon, as I have taken the position in many cases, that the union, once it signs a contract has no right to strike during the life of the contract if the strike is to force a change in the terms of the contract."

[8] As noted above, the Board has repeatedly refused to distinguish between notice to modify and notice to terminate, considering them for the purposes of Section 8 (d) one and the same thing.

struck without any notice in August, but, by virtue of giving the notice, and having exhausted all the mediating and negotiating requirements of Section 8 (d) could not lawfully strike the following April.

We cannot accept this proposition. In our opinion, (1) this view would encourage resort to "quickie" strikes and lockouts in the middle of a contract term, (2) it would encourage the termination of contracts as opposed to their modification, and (3) it would penalize a union which withholds strike action for a protracted period in an effort to reach agreement rather than merely observing the minimum waiting period provided in the Statute. We are certain that Congress did not intend that Section 8 (d) should have such unsettling results.

It suffices for our decision here that the contract specifically provided for modification and that the earliest date on which modification could be made effective was October 23, 1951. The notice was given precisely 60 days before that date. As the notice was served on August 24, the end of the 60 days statutory period and the date fixed in the contract for making modifications (which, as indicated above, we consider tantamount to "expiration" as that term is used in Section 8 (d) (4)) coincided.[9] Thus, the Union, before striking to enforce its economic demands satisfied the statutory requirements, and consequently the striking employees never lost the protection accorded economic strikers by the Act.

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[9] See *American Lawn Mower Company*, 108 NLRB No. 215.

Our decision in this case is not inconsistent, we believe, with the interpretation which the Court of Appeals for the Eighth Circuit placed upon Section 8 (d) in its opinion in the *Wilson* case. *Local No. 3, United Packinghouse Workers of America, CIO* v. *National Labor Relations Board,* 210 F. 2d 325, 331-333. In that case, a strike was called more than 60 days after the giving of notices of the kind required by Section 8 (d), but before the expiration date of a contract between the Company and the Union. A majority of the Board in the *Wilson* case had concluded that Section 8 (d) prohibits a strike to secure modification or termination of a contract only for a period limited to 60 days after the notices required by the Section have been given, and had held that the strike in question did not contravene the Section because the 60 day waiting period had been satisfied. The Court of Appeals believed, however, that the strike contravened Section 8 (d) because it occurred before the expiration date of the bargaining contract. Because of the basis on which the Board decided the *Wilson* case, the construction of 8 (d) which we adopt here was not presented by the Board to the Court. Leaving aside the effect of the wage reopener, we agree with the view of the Court of Appeals, consistent with the opinions expressed herein, that the 60-day notice period is not the maximum waiting period. Subject to the construction which we have given to Section 8 (d) here, we adopt the view that the waiting period extends until the "expiration date" of the contract.

In this case, it is clear that the statutory waiting period has here been satisfied since the strike herein occurred after the "expiration date" of the parties' agreement had passed.

* * *

Dated, Washington, D. C., August 5, 1954.

Guy Farmer, Chairman; Philip Ray Rodgers, Member; Albert C. Beeson, Member,
National Labor Relations Board.

IVAR H. PETERSON, MEMBER, Concurring:

I agree with Chairman Farmer and Members Rodgers and Beeson in their ultimate findings that the Union complied with the applicable terms of Section 8 (d) of the Act and that the Respondent violated Section 8 (a) (1), (3) and (5) of the Act. However, in my view they adopt an artificial interpretation of the provision in paragraph (4) of Section 8 (d), which requires maintenance of the contractual terms and conditions, without resort to strike or lockout, "for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later."

It seems apparent to me that the prime purpose of Congress in enacting Section 8 (d) was to prevent "quickie" strikes or precipitate lockouts designed to secure the modification or termination of collective bargaining agreements. To accomplish

this purpose, Congress established a mandatory 60-day "cooling off" period during which either party to a labor agreement is forbidden to resort to economic action to enforce its demands for modification or termination of the contract. In my opinion, the duty to maintain the contractual status quo for 60 days attaches *whenever* the parties enter into negotiations to modify or terminate a contract. That was the reasoning of the Board majority in the *Wilson* case,[10] and I would adhere to it.

By giving the term "expiration date" a specialized meaning, for which I find no warrant in the Act or its legislative history, my colleagues in the majority establish a "fixed pole" against which the waiting period is to be calculated or measured. They say "expiration date" means "the date in the course of a labor contract when the contract, by its own terms, is subject to either modification or termination." They then hold that if a notice is given more than 60 days before the expiration date, as they define the term, the obligation to refrain from economic action continues until the expiration date is reached. Thus, the "cooling off" period is enlarged beyond 60 days, and the effect is to hold strikes occurring more than 60 days after notice but before the contract expiration date to be unfair labor practices. But Congress in Section 13 stated that nothing in the Act, "except as specifically provided for herein, shall be construed so

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[10] 89 NLRB 310.

as to interfere with or impede or diminish in any way the right to strike. Moreover, it seems to me that Section 8 (d) itself, in stating that an employee loses his employee status if he "engages in a strike within the sixty-day period specified in this subsection," indicates that Congress intended the "cooling off" period to be *only* 60 days in duration rather than a flexible period of 60 or more days depending on the time interval between the date notice is given and the contract "expires." Therefore, I do not think the Board would be warranted in interpreting Section 8 (d) so as to impair the right to strike for periods in excess of 60 days following the giving of notice.

I readily concede that my construction of paragraph (4) of Section 8 (d) does not give full effect to its literal language. As written, and viewed in isolation, that paragraph appears to require the maintenance of the contractual status quo until the expiration date of the contract—even though notice was given more than 60 days earlier—if the expiration date "occurs later" than the end of the 60-day period calculated from the date notice was given. But I think the result which follows from such a literal interpretation operates to write into many labor contracts a no-strike clause of substantially longer duration than 60 days, contrary to the intention of Congress, as expressed in the other paragraphs of this section, and elsewhere. I think such an extension of the statutory limitation on the right to strike can be avoided by construing the phrase

"whichever occurs later" as having specific reference to a situation in which notice of desire to modify or terminate was given *less* than 60 days before the termination date of the contract. I believe Congress wished to make clear that in such a case the 60-day "cooling off" period should be observed before economic action could be taken, even though it extended beyond the end of the contract. As pointed out by Senator Taft (Cong. Rec., April 23, 1947, p. 3955), if a party "waits, let us say, until 30 days before the end of the contract to give the notice, then there is a waiting period provided during which the strike is an unlawful labor practice for 60 days from that time, or to the end of the contract and 30 days beyond that time."

Applying my view of Section 8 (d) to the facts of this case, I would hold that the notice of desire to amend given by the Union on August 24, 1951, was adequate to meet the requirements of Section 8 (d). As the strike in support of this demand did not occur until April 30, 1952, 8 months after the giving of notice, there can be no question that the Union fully met the 60-day waiting period. Therefore, the strikers did not lose their status as employees, but on the contrary were entitled to the protection of the Act.

In addition to the reasons set forth in the main opinion, I would find that the Respondent's refusal to recognize the continuing existence of the contract and its refusal to permit the Union to administer it during the strike, are further grounds

for finding that the Respondent violated Section 8 (a) (5) of the Act.

Dated, Washington, D. C.

Ivar H. Peterson, Member,
National Labor Relations Board.

ABE MURDOCK, MEMBER, dissenting:

I cannot agree with my colleagues in their interpretation of Section 8 (d) of the Act. In view of my interpretation of that section, the Union did not comply with it, and I am led to the ultimate conclusion that the complaint should be dismissed in its entirety.

In 1950 the Respondent and the Union executed a contract containing the following provisions with respect to the duration of the agreement.

Article I

"This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until canceled in the manner hereinafter in this Article provided.

"This agreement may be canceled and terminated by the Company or the Union as of a date subsequent to October 23, 1951, by compliance with the following procedure:

"(a) If either party to this agreement desires to amend the terms of this agree-

ment, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

"(b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the subsection immediately preceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective."

The contract did not contain a no-strike clause.

On August 24, 1951, the Union notified the Respondent and the Federal Mediation and Conciliation Service of its desire to amend the contract and of the existence of a labor dispute, and sent a copy of its letter to the State Labor Commissioner for the State of Arkansas. Negotiations on modification of the contract began on August 29, 1951. On February 14, 1952, the employees voted to strike and notified the Respondent. The strike, after several postponements, occurred on April 30, 1952. On June 21, 1952, the employees offered to

return to work, and the Respondent refused to reinstate them. A new contract and a strike settlement were executed on August 3, 1952, and on August 4 the strikers began to return to work.

On April 30, 1952, the date of the strike, the contract was in "full force and effect." With this finding the parties are in agreement. According to the provisions of the contract, it became one with no specific expiration date after October 23, 1951, *unless canceled* in the manner provided for in the contract. The method of termination is clearly defined in the contract. Either party desiring to amend the contract was to give such notice not earlier than August 24, 1951, sixty days before October 23, 1951. If agreement on modification was not reached within the 60-day period, the contract became one terminable upon the giving of 60-day notice of termination by either party. The record discloses that neither party gave the notice to *terminate* provided for by the contract, and thus it continued in effect up to August 3, 1952, when a new contract was executed.

Section 8 (d) of the Act not only provides certain standards by which the Board must determine whether employers and labor organizations have fulfilled their duties to bargain collectively under the Act, but it also provides for the loss of empoyee status, for the purpose of the Act, to those employees covered by a contract who strike under certain conditions. The relevant portions of Section 8 (d) pertinent to a situation where a contract is in existence are as follows:

" . . . Where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such a termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such

notice is given or until the expiration date of such contract, whichever occurs later:

". . . Any employee who engages in a strike within the sixty day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of Sections 8, 9, and 10 of this Act, as amended. . ."

The proviso of Section 8 (d), in my opinion, applies only to the period around the expiration date of a contract and does not apply earlier during the term of a contract. The proviso enumerates the duties of contracting parties when they seek to terminate, renew, or renegotiate a contract for a fixed period *upon the expiration of its term or when they seek to terminate or modify a contract of indefinite duration;* it does not define the obligations of contracting parties with respect to changing the provisions of a contract *during its term.* The proviso only directs and encourages the bargaining efforts of parties to a contract during the crucial period when an existing contract is about to expire and negotiations for a succeeding contract are appropriate.

Section 8 (d) describes the action which employers and labor organizations must take to fulfill the duty to bargain required by the Act. The proviso to the section imposes additional obligations upon the parties where there is in effect a collective bargaining contract, and certain pro-

cedural requirements are outlined in paragraphs (1), (2), (3) and (4).

The language used throughout the proviso limits the application of the procedure set forth therein to termination or modification of a contract at *its expiration date.* Thus paragraph (1) of the proviso clearly says that a party desiring termination or modification of an existing contract shall serve a written notice of the proposed change "sixty days prior to *the expiration date* thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification." [Emphasis supplied.] It does not say that 60 days' notice must be given *whenever* a party wants to negotiate changes in a contract, but that notice must be given only at a particular time—immediately preceding the *expiration date* of the contract, or, if the contract has no expiration date, then 60 days prior to the proposed termination or modification. The latter provision obviously covers contracts of indefinite duration or one terminable at will as in this case.

Paragraph (2) of the proviso requires a party desiring termination or modification of a contract to offer to meet and confer with the other party for the purpose of "negotiating a new contract or a contract containing the proposed modifications." Such language points to the negotiation of a contract to succeed an existing contract upon its expiration date.

Paragraph (4) of the proviso directs that a party desiring to terminate or modify a contract shall continue in effect, without resort to strike or lockout, the terms of the contract "for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later." The notice referred to in this paragraph is the notice which paragraph (1) states shall be given "sixty days prior to the expiration date" of a contract. Hence the 60-day period during which strikes and lockouts are banned by paragraph (4) would ordinarily be the 60-day period immediately preceding the expiration date of a contract. However, in the event the party who is required to give notice delays and fails to give notice at the time specified in paragraph (1), he is prohibited from engaging in a strike or lockout after the expiration date of the contract when he would otherwise be free to exert his economic force; he may not use such tactics until 60 days after he has given the required notice. Thus paragraph (4) regulates the conduct of parties to a contract *during the period around its expiration date.*

That part of Section 8 (d) after the outline of procedure to be followed by a party seeking termination or modification of a contract further demonstrates that the proviso applies only to termination or modification of a contract upon its expiration. Here Section 8(d) explains that the duties imposed by paragraphs (2), (3), and (4) shall become "inapplicable upon an *intervening certification* of the Board, under which the labor

organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of Section 9 (a)." [Emphasis supplied.] Under our well-known contract bar policy the Board refuses to conduct representation proceedings when a bargaining contract is in existence, absent unusual circumstances. Therefore, an "intervening certification" would usually occur only during the period around the expiration date of a contract.

Section 8 (d) further clarifies the proviso by stating that the obligations set forth in paragraphs (2), (3) and (4) shall not be construed as requiring either party to a contract for a fixed period to discuss modification of its terms if such modifications will become effective before the contract provides for the reopening of terms. Therefore the modifications contemplated by paragraphs (2), (3), and (4)—modifications on which the parties have an obligation to discuss—must be modifications which would become effective upon the expiration of the existing contract and which would appropriately be negotiated during the period around the expiration date of the contract.

Finally, Section 8 (d) provides that "any employee who engages in a strike within *the* sixty-day period specified in this subsection shall lose his status as an employee * * * for the purposes of Sections 8, 9, and 10, of this Act." [Emphasis supplied.] This language contemplates only *one* 60-day period, the notice period which paragraph

(1) declares shall begin 60 days before *the expiration date* of an existing contract. It does not contemplate *a* 60-day cooling-off period at *any* time during the term of a contract that one party desires to change the contract. The proviso does not purport to regulate strikes or strikers at any time other than during this specified 60-day period.

Not only does the wording of the proviso to Section 8 (d) show that Congress was prescribing certain standards of conduct during the period around *the expiration of a contract*, but the legislative history concerning the proviso also supports this view.

The provisions of Section 8 (d) were derived from the Senate Bill. The Senate Report on S. 1126 referring to Section 8 (d) states:

> "Another substantive feature of this subsection is a provision which relates to employers and labor organizations which are parties to collective agreements. *Most agreements have an expiration date, with an automatic renewal clause in the absence of advance notice by either side of a desire to terminate or modify. Under this section, parties to collective agreements in the future would be required to give 60 days' notice in advance of the termination date, if they desire to terminate or amend.* Should the parties fail to agree on a new contract in the next 30 days, the party taking the lead in refusing *the old contract* has the duty to notify the new Federal Mediation Service of the im-

passe. Should the notice not be given on time, *irrespective of the presence or absence of a 60-day clause in the collective agreement,* it becomes an unfair labor practice for an employer to change any of the terms or conditions specified in the contract for 60 days or to lock out his employees. Similarly, it is an unfair labor practice by a union to strike before the expiration of the 60-day period. Any employee who engages in a strike during the 60-day period would lose any rights under Sections 8, 9, and 10 of the Wagner Act, unless and until he is reemployed. It should be noted that this section does not render inoperative the obligation to conform to notice provisions for longer periods, if the collective agreement so provides. Failure to give such notice, however, does not become an unfair labor practice if the 60-day provision is complied with." (Emphasis added.) (Sen. Rep. No. 105 on S. 1126, p. 25.)

The legislative history, as reflected in the remarks of Senator Taft on the floor of the Senate, also demonstrates that the purpose of the proviso, in his opinion, was to afford the parties to a contract adequate time "before the end of the contract" for free collective bargaining and the intervention of the Mediation Service. In this connection Senator Taft stated:

"We have provided in the revision of the collective bargaining procedure, in connection with the mediation process, that before *the end*

> *of the contract,* whether it contains such a provision or not, either party who wishes to open the contract may give 60 days' notice in order to afford time for free collective bargaining, and time for the intervention of the Mediation Service. *If such notice is given,* the bill provides for no waiting except during *the life of the contract* itself. *If, however, either party neglects to give such notice and waits, let us says, until 30 days before the end of the contract to give the notice, then there is a waiting period provided during which the strike is an unlawful labor practice for 60 days from that time, or to the end of the contract and 30 days beyond that time.* In that case there is a so-called waiting period during which a strike is illegal, but it is only brought about by the failure of the union itself to give the notice which the bill requires shall be given. So it seems to me to be no real limitation of the rights of labor unions." (Cong. Rec., April 23, 1947, p. 3955). (Emphasis added.)

Likewise, Senator Ives, in proposing an amendment to Section 8 (d) (3), not material to this case, described Section 8 (d) as one, "which provides that employers or employees shall serve notice 60 days *before the expiration of a contract* if there is going to be any change * * *" (Emphasis supplied.) (Con. Rec., May 9, 1947, p. 5081).

The Chairman and Members Rodgers and Beeson argue that it would be futile to require a cool-

ing-off period only at the termination of the contract. But that is just what Congress did, although I cannot agree that Congress by so doing indulged in a futility. Their opinion states that "it is as desirable to discourage interruptions to the free flow of commerce arising from labor disputes during the life of a bargaining agreement as at or near its termination." This conclusion, which appears to be central to their interpretation of Section 8 (d), seems to me to be based essentially upon what they individually believe would be good policy rather than upon the language of the statute or the legislative history. It is my opinion, however, that it is neither incumbent upon the Board nor proper for the Board to question the wisdom of Congress as reflected in the words of Section 8 (d) and its legislative history. In the words of the Supreme Court of the United States in *Colgate-Palmolive Peet* v. *N.L.R.B.*, 338 U.S. 355 at 363, "It is not necessary for us to justfy the policy of Congress. It is enough that we find it in the statute." I am of the opinion that my interpretation of Section 8 (d) is a literal application of the language enacted by Congress toward a logical and reasonable result. By giving literal effect to the words of Congress, I have avoided statutory surgery, on the one hand, or legislative policy engrafting, on the other.

Although the language of the statute speaks for itself, I have also found, as it appears above, that supporters of the bill, including the Chairman of the Senate Committee, believed that Section 8 (d) was applicable *only* at the time around the expira-

tion of the contract. In going to the legislative history, I have looked to the Committee Reports and the statements in debate of supporters of the bill, unlike the Chairman and Members Rodgers and Beeson, who rely upon the statements of Senators Murray and Morse who voted against the bill and upon the Senate Minority Report. As the Supreme Court stated in *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U.S. 384 at 394, "The fears and doubts of the opposition are no authoritative guide to the construction of legislation. It is the sponsors that we look to when the meaning of statutory words is in doubt."

I cannot, among other things, reconcile the provision of Section 8 (d) that, "the duties so imposed shall not be construed as requiring *either party* to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract" with the conclusion of Member Peterson that Congress established a mandatory 60-day "cooling-off" period which "attaches *whenever* the parties enter into negotiations to modify or terminate a contract." Is it reasonable to conclude that Congress could have required a "cooling-off period" for bargaining at a time when it expressly stated neither party was under an obligation to bargain on changes in the contract?

I wish to make it clear beyond any doubt that in my opinion Congress has not removed no-strike

clauses in contracts from the sphere of collective bargaining and legislated them into every collective bargaining agreement by the terms of Section 8 (d). Congress did, in effect, write into contracts a 60-day notice period similar to the 60-day notice to terminate or modify contracts with automatic renewal clauses, which the Senate Report stated are found in "most agreements." In referring to such contractual provisions, the Senate Report, quoted earlier, stated that "irrespective of the presence or absence of the 60-day clause in the collective agreement" parties to contracts must give such 60-day notice to terminate or modify under Section 8 (d). I am unable to perceive in the language of Section 8 (d) or in the legislative history any indication that Congress intended to remove agreements not to strike from the practices and procedures of collective bargaining and to write a no-strike clause into every collective bargaining contract. I would, moreover, be very hesitant to make such an inference of Congressional intent in the face of the admonition contained in Section 13 of the Act, which states: "Nothing in this Act, *except as specifically provided for herein,* shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right." (Emphasis supplied.)

That Congres did not intend to enact compulsory no-strike clauses into contracts is also evident from another section of the Senate Report. In Senate Report No. 105 on S. 1126, on pages 16 and 17, the

Senate Committee discussed Title III of the amendment which relates to suits by and against labor organizations for breach of collective bargaining agreements. The Committee viewed the provisions of Section 301 as insuring the stability to be desired in collective bargaining relations. The Committee, however, made it apparent that it did not intend to write no-strike clauses into collective bargaining agreements by the enactment of Section 8 (d), for on page 17 *immediately following the paragraph quoted in footnote 3 of the three-Member opinion* the Report stated:

> It has been argued that the result of making collective agreements enforceable against unions would be that *they would no longer consent to the inclusion of a no-strike clause in a contract.* This argument is not supported by the record in the few States which enacted their own laws in an effort to secure some measure of union responsibility for breaches of contract. Four States—Minnesota, Colorado, Wisconsin, and California—have thus far enacted such laws and, so far as can be learned, no-strike clauses have been continued about as before.
>
> In any event, *it is certainly a point to be bargained over* and any union with the status of "representative" under the NLRA which has bargained in good faith with an employer should have *no reluctance in including a no-strike clause if it intends to live up to the terms*

> *of the contract.* The improvement that would result in the stability of industrial relations is, of course, obvious. (Emphasis supplied.)

If Congress had intended to prohibit strikes at any time during the term of a contract, would it have been concerned with the argument that Title III, Section 301, (that labor unions may sue and be sued in the Federal courts) would discourage unions from agreeing to the inclusion of no-strike clauses in contracts? If it had been intended to remove no-strike provisions from the realm of collective bargaining, would the Report have then stated that the inclusion of no-strike clauses in contracts "is certainly a point to be bargained over?" Would it have made the declaration of opinion that a union which intends to live up to its contract ought not to be reluctant to agree to a no-strike clause? I think not.

The Chairman and Members Rodgers and Beeson refer to the interpretation given to Section 8 (d) by the Court of Appeals for the Eighth Circuit in *Local No. 3, United Packinghouse Workers of America, CIO* v. *National Labor Relations Board.* In my opinion the Court rejected the construction placed upon Section 8 (d) by the Chairman and Members Rodgers and Beeson; the Court also refused to accept the interpretation of Member Peterson. Both viewpoints were presented to the Court. Under these circumstances and with due respect to the Court of Appeals for the Eighth Circuit, I am constrained to adhere to the views ex-

pressed in my opinion until the Supreme Court of the United States has had an opportunity to pass on the question.

The Chairman and Members Rodgers and Beeson state that their interpretation does not have the effect of writing a no-strike clause into every contract—only into some agreements. It is apparent that this statement significantly limits the broad, general, and sweeping language and rationale which appear before that statement in their opinion. As I have explained earlier, however, the language of Section 8 (d) contemplates *one 60-day period* within which employees who engage in a strike shall lose their status as employees.

The three-member opinion further states that their interpretation of Section 8 (d) "preserves the right to strike in all circumstances where the parties have provided in their agreement for negotiating substantial changes in its provisions . . ." This in its context is tantamount to saying that Section 8 (d) wrote a no-strike clause in every collective bargaining contract for the period of its duration but that the parties by agreement to a reopening clause can nullify or abrogate the statutory provision as the three Members construe it. This in itself as a principle is very questionable, but more than that, I find it extremely difficult to reconcile this position with that taken by the same Board Members in *General Electric Company,* 108 NLRB No. 183, where the majority set aside a contract as a bar to a representation petition because of the nature of its reopening provisions. As

I view it, the three Members are stating in the present case that they are protecting the right to strike during the term of a contract if the parties have provided for reopening to negotiate substantial changes. With equal force, however, in the *General Electric* case the majority has declared that if the parties do exercise the right to agree on such provisions, under the circumstances of that case, stability does not exist and the union is immediately vulnerable to a rival petition. Not contributing to an understanding of what the majority is preserving is the majority opinion in *American Lawn Mower Co.*, 108 NLRB No. 215, (cited by the three Members in footnote 9) in which the modification and termination clauses of a contract were coterminus and where the majority, holding that a notice to modify actually terminated the contract, stated, "It would seem incongruous to hold that there is a valid contract binding upon the parties at the very time that the Union strikes to obtain an effective agreement with the Employer." I fail to discern the filament of logic or consistency which would make these various statements and decisions coherent.

As I analyze their opinion, the Chairman and Members Rodgers and Beeson further limit the general basis of their argument by stating that the opinion expressed by them "has no bearing on the right to strike for reasons and purposes other than to obtain contract modification or termination." By this, I take it, they agree with the decision in *Mastro Plastics Corp.*, 103 NLRB 511, where

former Chairman Herzog and I dissented in part. As we stated: "The language used in Section 8 (d) does not distinguish as to what types of strikes or lockouts are prohibited during the 60-day period." Our reasons for disagreeing with the majority on this point are fully expressed in our opinion in that case and will not be repeated here.

In summary, as to the interpretation of Section 8 (d), I am convinced by the language of that section that the proviso applies only when parties to a fixed-term contract seek to terminate or modify it upon its expiration or when they seek to terminate or modify a contract of indefinite duration or one terminable at will. I further think that this view is a reasonable one, consistent with the intent of Congress as revealed in the legislative history.

Having reached this conclusion as to the meaning of Section 8 (d) there remains the effective application of this section to the facts in the present case. As I interpret the duration provisions of the contract between the Respondent and the Union, the contract was to be in effect until October 23, 1951, and thereafter was to continue as a contract terminable at will upon the giving of notice in accordance with specified procedure. After October 23, 1951, therefore, the contract was in existence without a definite termination date, but could be brought to expiration simply and reasonably by compliance with its clear terms at the will of either party. Under my view of the Statute, Section 8 (d) was applicable whenever one of the parties desired to terminate this *latter* contract. The Union was

therefore obligated at such time to comply with the procedures set forth in that section. Such procedures required the Union here, where the contract contained no expiration date, to serve written notice upon the Respondent of its proposed termination or modification of that contract 60 days prior to the time it proposed to make such termination or modification and to refrain from striking during those 60 days. This the Union failed to do when it went on strike in April 1952 to compel immediate modification or termination of the existing contract by agreement on the Union's proposals. The earlier notice it gave on August 24, 1951, did not meet the 8 (d) requirements. That notice was of a desire to amend the initial contract for the purpose of complying with the provisions of the contract on amendments; it was given before the contract terminable at will came into being and hence was given before the period when the proviso to Section 8 (d) applied. As the Union failed to give notice to the Respondent and the Conciliation Service and any state mediation agency as required by Section 8 (d), and the employees, nevertheless, struck, the strikers lost their status as employees of the Respondent and were not entitled to reinstatement at any time after they struck on April 30, 1952.

The Chairman and Members Rodgers and Beeson have decided that the "expiration date" or "modification date" of the contract was October 23, 1951, and conclude that the notices given on August 24, 1951, met the requirements of Section 8 (d). Ac-

cording to them, "If Section 8 (d) is considered in the framework of industrial reality and in the perspective of the Congressional purpose to protect the stability of collective bargaining agreements against strikes and lockouts during the life of a contract, it becomes clear that Congress used the term 'expiration date' to signify the date in the course of a labor contract when the contract by its own terms is subject to either modification or termination . . . " That Congress was aware of, and took into consideration, the fact that many contracts contain a 60-day automatic renewal provision effective 60 days *before the termination date* of a contract is apparent from the reference made to those provisions on page 25 of the Senate Report which is quoted and discussed earlier in this opinion. I do not know, however, what "framework of industrial reality" dictates that the Chairman and Members Rodgers and Beeson then find that "expiration date" means something esoteric, or something quite unlike the meaning ordinarily applied in the law of contracts. I suggest that the problem of expiration date, which to me means "termination date," created by the Chairman and Members Rodgers and Beeson would quickly dissolve if they were willing to read, and to give effect to, the simple and cogent language of the contract itself. Under those provisions the notice given on August 24, 1951, did not *terminate* the contract, and, when October 23, 1951, arrived, the contract did not expire, but under its terms was converted into a contract terminable at will upon the

giving of the 60-day notice to terminate required by its terms. It is my opinion that, except when it would be contrary to law, the terms of a contract freely arrived at after collective bargaining should be given the clear meaning intended by the contracting parties.

In view of the Union's failure to comply with Section 8 (d) of the Act and the Respondent's genuine attempts to reach a collective bargaining agreement from August 29, 1951, to August 3, 1952, when a new contract was executed, I would not find violations of Section 8 (a) (5) in the isolated incidents alleged as such violations.

As I would find neither a violation of Section (a) (3) nor Section 8 (a) (5), I would dismiss the complaint in this case.

Dated, Washington, D. C.

ABE MURDOCK, *Member,*
NATIONAL LABOR RELATIONS BOARD

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 124

LOCAL NO. 3, UNITED PACKINGHOUSE WORKERS OF AMERICA, CIO,

Petitioner,

vs.

WILSON & CO., INC., A CORPORATION, AND NATIONAL LABOR RELATIONS BOARD,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

SUPPLEMENTAL BRIEF OF RESPONDENT, WILSON & CO., INC., IN OPPOSITION TO THE PETITION.

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